

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DAVID ADKINS,

Petitioner,

v.

CIVIL ACTION NO. 5:04-cv-00828

JAMES IELAPI, Warden,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is the petitioner's motion under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court dismiss the petition for bringing the petition after the expiration of the applicable statute of limitations and for failure to exhaust state court remedies.


Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **ORDERS** that the petition be **DISMISSED**, without prejudice.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 3, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE